

# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

David J. Lubofsky

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANTS

Government of Guam;  
Government of Guam Retirement  
Fund

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

## (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Law Offices of Gorman & Gavras, P.C.  
2nd Floor, J&R Building  
208 Route 4; Hagatna, Guam 96910

## ATTORNEYS (IF KNOWN)

04-00031

## II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 881 Agricultural Acts <input type="checkbox"/> 882 Economic Stabilization Act <input type="checkbox"/> 883 Environmental Matters <input type="checkbox"/> 884 Energy Allocation Act <input type="checkbox"/> 885 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition

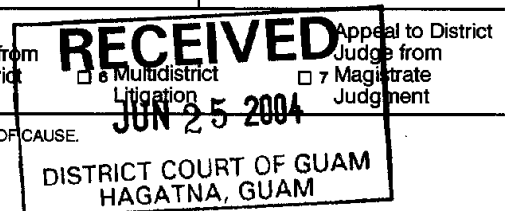
## V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify) \_\_\_\_\_

## VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Title VII Employment Discrimination



## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION  
☐ UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

## VIII. RELATED CASE(S) (See instructions): IF ANY

JUDGE

DOCKET NUMBER

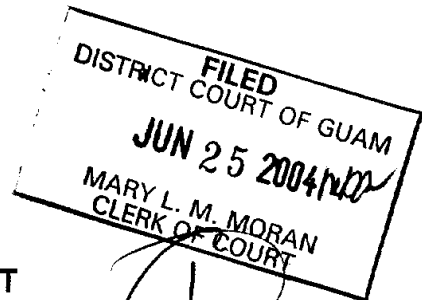
DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

A. Alexander Gorman, Esq.  
LAW OFFICES OF GORMAN & GAVRAS  
A Professional Corporation  
2<sup>ND</sup> Floor, J & R Building  
208 Route 4  
Hagatna, Guam 96910  
Telephone: 472-2302  
Facsimile: 472-2342

Attorneys for Plaintiff  
DAVID J. LUBOFSKY



IN THE U.S. DISTRICT COURT  
OF GUAM

DAVID J. LUBOFSKY,

CIVIL CASE NO. **04-00031**

Plaintiff,

vs.

GOVERNMENT OF GUAM; GOVERNMENT  
OF GUAM RETIREMENT FUND

Defendants.

COMPLAINT FOR DAMAGES  
FOR RACIAL EMPLOYMENT  
DISCRIMINATION  
[42 U.S.C. §2000e];  
BREACH OF STATUTORY &  
IMPLIED CONTRACT; and  
NEGLIGENCE

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff DAVID J. LUBOFSKY, and by way of his Complaint,  
alleges as follows:

**JURISDICTION**

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343,  
& 1367 and 42 U.S.C. § 2000e.

2. Within 180 days after the alleged unlawful employment practice  
hereinafter set forth, the Plaintiff filed a charge of racial discrimination with the Equal  
Employment Opportunity Commission satisfying the requirements of 42 USC § 2000e-  
5, and on or after April 6, 2004, less than 90 days prior to the filing of this Complaint,

ORIGINAL

the Plaintiff received a Notice of Right to Sue from the Commission with respect to Plaintiff's charges as set forth below (a copy of which is attached as an Exhibit).

**PARTIES**

3. Plaintiff DAVID J. LUBOFSKY at all relevant times was and is a resident of Guam and was employed by the Defendant at all relevant times herein.

4. At all times material herein, Defendant GOVERNMENT OF GUAM was and is a public entity organized and existing under the laws of and in the Territory of Guam, as a territory of the United States of America, and pursuant to the Organic Act of Guam, and has its principal place of business in the Territory of Guam within this judicial district. Furthermore, and at all relevant times, this Defendant is and has been a covered entity under the 42 USC §2000e(a) & (b).

5. At all times material herein, Defendant GOVERNMENT OF GUAM RETIREMENT FUND was and is a public entity and an autonomous agency organized and existing under the laws of and in the Territory of Guam as a territory of the United States of America, and pursuant to the Organic Act of Guam, and has its principal place of business in the Territory of Guam within this judicial district. Furthermore, and at all relevant times, this Defendant is and has been a covered entity under the 42 USC §2000e(a) & (b).

6. At all times mentioned herein, Defendant GOVERNMENT OF GUAM and Defendant GOVERNMENT OF GUAM RETIREMENT FUND engaged in an industry affecting commerce and they each employ in excess of fifteen (15) employees and at

all relevant times, any such relevant employees were acting within the course and scope of their employment, and as such, each Defendant is fully liable for all the acts of its employees under the doctrine of Respondeat Superior.

7. Defendant GOVERNMENT OF GUAM is legally obligated to provide retirement benefits to its employees. Defendant GOVERNMENT OF GUAM RETIREMENT FUND is legally obligated to administrate the retirement benefits for all GOVERNMENT OF GUAM employees.

8. Plaintiff is informed and believes and thereupon alleges, that each of said Defendants and its employees are jointly and severally liable as the principal, officer, agent, master, servant, employer, employee and partner of each of the other Defendants and was in doing the acts complained of herein, acting within the scope of his, her or its said agency, employment or partnership.

9. At all times material herein, 42 U.S.C. §2000e et. seq. has been fully in force and effect and binding upon Defendants. Such section requires Defendants to refrain from violating the rights of any of its/their employees.

#### **BACKGROUND**

10. Prior to his wrongful termination, Plaintiff DAVID J. LUBOFSKY has been employed by the Defendant GOVERNMENT OF GUAM in the Department of Education, a line agency of the GOVERNMENT OF GUAM, as a Department of Education School Psychologist and is an employee within the meaning of 42 U.S.C. §2000e(f).

11. Furthermore, Plaintiff DAVID J. LUBOFSKY is a Caucasian male.

**FIRST CAUSE OF ACTION FOR TITLE VII RACIAL DISCRIMINATION  
VIOLATIONS AGAINST BOTH DEFENDANTS**

12. Plaintiff incorporates by reference paragraphs 1 through 11, above.
13. On or about May of 2001, Defendant GOVERNMENT OF GUAM hired Plaintiff as an employee of said Defendant.
14. On or about January, 2003, Plaintiff suffered a debilitating work injury. Plaintiff is certified as permanently medically disabled by his doctors and is unable to perform his job functions.
15. On or about March 2003, Plaintiff applied for medical disability retirement benefits. At the time Plaintiff applied for medical disability retirement benefits, he was medically qualified for, and legally entitled to, such benefits.
16. Sometime after March 2003, the Defendants denied Plaintiffs application for medical disability retirement benefits allegedly on the basis that no Department of Education employees were eligible for retirement benefits due to a lack of funding. However, between March 2003 and November 2003, Defendant GOVERNMENT OF GUAM RETIREMENT FUND processed and approved the retirement benefits applications of 46 other people, all of non-Caucasian descent. During this same period, Defendant GOVERNMENT OF GUAM RETIREMENT FUND further denied the retirement benefits application of another white male applicant.
17. Therefore, the Defendants wrongfully, intentionally and willfully denied Plaintiff his lawfully entitled medical disability retirement benefits, thereby injuring Plaintiff in his employment based on his race.

18. The effect of the intentional and wrongful denial of medical disability retirement benefits complained of above has been to deprive Plaintiff of equal employment opportunities and has otherwise adversely affected his status as an employee because of his race.

19. Furthermore, as a proximate result of the Defendants' intentional and wrongful conduct, Plaintiff suffered and continues to suffer from the loss of medical disability retirement benefits, other pecuniary losses, past, present and future mental and emotional distress, anguish and inconvenience.

20. As a further direct and proximate result of the intentional and wrongful conduct of the Defendants, Plaintiff has been damaged in an amount to be proven at trial.

21. The Defendant's discriminatory conduct was willful and intentional and was engaged in with malice and reckless indifference to Plaintiff's federally protected rights thereby entitling Plaintiff to exemplary and punitive damages as provided for in 42 U.S.C. § 1981a(b)(1).

**SECOND CAUSE OF ACTION FOR BREACH OF STATUTORY AND/OR IMPLIED  
CONTRACT AGAINST DEFENDANTS**

22. Plaintiff incorporates by reference paragraphs 1 through 21, above.

23. At all relevant times, Plaintiff had a statutory and/or an implied contract of employment with Defendants.

24. When Defendant intentionally and wrongfully denied Plaintiff medical disability retirement benefits to which Plaintiff is entitled pursuant to Guam law, Defendant breached the statutory and/or implied employment contract.

25. As a proximate result of the Defendants wrongful conduct, Plaintiff suffered and continues to suffer from the loss of employment benefits, other pecuniary losses, past, present and future mental and emotional distress, anguish and inconvenience.

26. As a further direct and proximate result of the intentional and wrongful conduct of the Defendant, Plaintiff has been damaged in an amount to be proven at trial.

### **THIRD CAUSE OF ACTION FOR NEGLIGENCE**

27. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 26, above.

28. The Defendants and their agents and employees were negligent in their aforementioned conduct towards Plaintiff DAVID J. LUBOFSKY.

29. As a proximate result of the Defendants' negligence, Plaintiff DAVID J. LUBOFSKY suffered and continues to suffer from loss of employment benefits, other pecuniary losses, past, present and future mental and emotional distress, anguish and inconvenience.

30. As a further direct and proximate result of the negligence of the Defendants on the aforementioned date, Plaintiff DAVID J. LUBOFSKY has been damaged in an amount to be proven at trial.

**PRAYER**

WHEREFORE, Plaintiff DAVID J. LUBOFSKY prays for relief against the Defendants, jointly and severally, as follows:

1. In all Counts for General and Special Damages in an amount to be proven at trial;
2. In count I for exemplary and punitive damages as provided for in 42 U.S.C. § 1981a(b)(1);
3. For costs of suit, attorney fees, and pre-judgment interest as provided for in 42 U.S.C. § 2000e-5; and
4. For such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a Jury Trial in the above-captioned matter.

LAW OFFICES OF GORMAN & GAVRAS

Date: June 24, 2003

BY:   
A. ALEXANDER GORMAN, ESQ.  
Attorneys for Plaintiff  
DAVID J. LUBOFSKY

# EXHIBIT

EEOC Form 1d1 (3/99)

## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## DISMISSAL AND NOTICE OF RIGHTS

Atty: ALEX  
GORMAN

To: David J. Lubofsky  
Tumon Vista #201  
144 Leon Guerrero Drive  
Tumon, GU 96913

From: Honolulu Local Office  
300 Ala Moana Blvd  
Room 7-127  
Honolulu, HI 96850

☐

On behalf of person(s) aggrieved whose identity is  
CONFIDENTIAL (29 CFR § 1601.7(e))

EEOC Charge No.

EEOC Representative

Telephone

378-2004-00117

Glory Gervacio, Investigator

(808)

## THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐

Your allegations did not involve a disability as defined by the Americans with Disabilities Act.

☐

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.

☐

Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.

☐

While reasonable efforts were made to locate you, we were not able to do so.

☐

You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.

☒

The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐

Other (briefly state)

## - NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

**Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this Notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred **more than 2 years (3 years)** before you file suit may not be collectible.

On behalf of the Commission

*Timothy A. Riera*  
Timothy A. Riera, Director

3/31/04  
(Date Mailed)

Enclosures)

cc

Juan P. Flores  
Superintendent of Education  
Department of Education  
P.O. Box DE  
Agana, GU 96932